

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAJUAN TRAMINE HOLLOWAY,

Defendant-Appellant.

UNPUBLISHED

August 7, 2014

No. 315227

Wayne Circuit Court

LC No. 12-011225-FC

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals his jury trial convictions of carjacking, MCL 750.529a, and armed robbery, MCL 750.529. For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

This case involves a carjacking that took place in July 2012 outside a restaurant in Detroit. Three men, one of whom claimed to be armed, surrounded the victim, robbed him, and stole his car. After he contacted the police, the victim identified defendant as the armed man who threatened him with violence and stole his car. Defendant was accordingly charged with violating MCL 750.529a and 750.529, and a jury convicted him of both offenses.

On appeal, defendant claims that: (1) the trial court abused its discretion when it denied defendant's motion for the appointment of an expert witness in eyewitness identification; and (2) he received ineffective assistance of counsel.

II. ANALYSIS

A. EXPERT WITNESS APPOINTMENT

A trial court's decision on whether to grant an indigent defendant's request for the appointment of an expert witness is reviewed for an abuse of discretion. *People v Carnicom*, 272 Mich App 614, 616; 727 NW2d 399 (2006). A trial court abuses its discretion when its decision results in an outcome outside the range of principled outcomes. *Id.* at 617.

The trial court may authorize appointment of an expert witness at the taxpayer's expense when an indigent defendant demonstrates "that there is a material witness in his favor within the

jurisdiction of the court, without whose testimony he cannot safely proceed to a trial.” MCL 775.15. This burden—which, again, falls on the indigent criminal defendant—is a heavy one, and defendant “must demonstrate a nexus between the facts of the case and the need for an expert,” not just the “mere possibility of assistance from the requested expert.” *People v Tanner*, 469 Mich 437, 443; 671 NW2d 728 (2003) (citations omitted).

Here, defendant unconvincingly claims that the trial court abused its discretion when it denied his pretrial motion for the appointment of an expert in eyewitness identification. Because of the efforts of his counsel to aggressively pursue the issue of eyewitness identification, the absence of an expert in eyewitness identification did not prevent defendant from safely proceeding to trial. Defendant’s trial attorney made a defense of alibi/mistaken identity, and presented and questioned two alibi witnesses, who testified that defendant was customarily home at night and could not have been the perpetrator identified by the victim. Counsel then vigorously cross-examined the victim on alleged inconsistencies in his description of the perpetrator and his ability to remember and perceive the event. And during closing argument, trial counsel observed what he believed to be weaknesses in the victim’s identification and testimony. Among other things, he pointed out that the victim may have been subjected to a suggestive photographic array, stressed that misidentification is supposedly a common occurrence, and even told the jury of a personal story where he recently misidentified a close friend while coming out of a restaurant. Accordingly, defendant presented the possibility that the victim did not accurately identify him *without* the assistance of an expert witness. He thus cannot claim that he could not safely proceed to trial without expert testimony.

In any event, defendant fails to demonstrate a nexus between the facts of this case and the need for an expert. *Tanner*, 469 Mich at 443. Though defendant claims an expert was necessary to educate the jury about supposed problems with eyewitness identification, it is obvious to jurors that the memories and perceptions of an eyewitness are sometimes inaccurate. *People v Cooper*, 236 Mich App 643, 658; 601 NW2d 409 (1999). While defendant may seek public funding to flesh out a defense, seeking such funding for an expert to tell the jury what it already knows is neither necessary nor good use of limited resources. The trial court correctly denied defendant’s request for an expert witness on eyewitness identification.

B. ASSISTANCE OF COUNSEL

Whether a defendant has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. *People v Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011). The trial court’s findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.* “A defendant that claims he has been denied the effective assistance of counsel must establish (1) the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms and (2) a reasonable probability exists that, in the absence of counsel’s unprofessional errors, the outcome of the proceedings would have been different.” *People v Sabin (On Second Remand)*, 242 Mich App 656, 659; 620 NW2d 19 (2000).

Here, defendant wrongly asserts that his trial attorney gave him ineffective assistance, because of supposed deficiencies in the attorney’s pretrial motion for the appointment of the aforementioned expert witness. The trial counsel’s 11-page pretrial motion on the matter was

thorough, and he argued before the court for the appointment of an expert. It is unsurprising, then, that defendant is unable to explain any specific deficiencies in his attorney's performance—a failure that is fatal to his claim of ineffective assistance of counsel.

And even if his attorney's performance had been below an "objective standard of reasonableness," the outcome of defendant's trial would not have been different. As noted, the trial attorney cross-examined the victim on the strength of his identification of defendant as one of the men who robbed and carjacked him, and also presented a theory of alibi and mistaken identity. Despite the vigor of this defense, the jury plainly believed defendant committed the crimes of which he was charged. His assertions that he received ineffective assistance of counsel are thus completely without merit.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio